

COMMISSION ON ACCREDITATION FOR CORRECTIONS  
STANDARDS COMPLIANCE REACCREDITATION AUDIT

Montana Department of Corrections  
Montana Board of Pardons and Parole  
Deer Lodge, Montana

September 22-23, 2003

VISITING COMMITTEE MEMBERS

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## **A. Introduction**

The audit of the State of Montana, Board of Pardons and Parole, was conducted on September 22-23, 2003, by the following team: Douglas J. Gertsema, Chairperson; and Wayne Smith, Member.

## **B. Facility Description**

The Montana State Board of Pardons and Parole consists of three members and four auxiliary members, each of whom must have knowledge of American Indian culture and problems gained through training as required by rules adopted by the board. Members of the board, including the auxiliary members, must possess academic training that has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements. Each member is appointed by the governor for staggered four-year terms subject to confirmation by the state senate. The governor appoints the chair in accordance with state law. The vice-chair and secretary are elected by the members in an executive session. The Board is part of the executive branch of state government and is attached to the Department of Corrections for administrative purposes only. All functions of the Board are performed independently of that department. The Board has eight full time employees that support a seven member citizen parole board. The staff maintains over 6000 inmate files and processed 2,395 cases in fiscal year 2003.

The Board of Pardons and Parole, as part of the criminal justice process, serves all Montana citizens by administering a flexible system of punishment, which fully protects society. All employees and members of the Board of Pardons and Parole are committed to securing the effective application of and improvements to the clemency and parole system and of the laws upon which they are based. The parole board process is administered in an effective, humane, safe, and just fashion.

There has been some form of parole within Montana since the 1889 constitution authorized the governor to grant pardons, remit fines and forfeitures, and commute punishments subject to the approval of a Board of Pardons. The constitution directed the legislature to provide for the appointment, composition, powers, and duties of the Board. In 1907, the legislature established the parole of prisoners by the Board of Prison Commissioners, which was comprised of the governor, secretary of state, and attorney. For the next 48 years, a dual board system existed. The Board of Prison Commissioners handled paroles.

In 1955, however, the functions of the two boards were combined and assigned to a reconstituted Board of Pardons. The Board consisted of three members appointed by the governor with the advice and consent of the senate. Members served staggered six-year terms. In addition to administering the laws governing parole and executive clemency, the Board was charged with supervising probation cases. The 1955 legislation also authorized the Board to appoint a state director of probation and parole. The director, in turn, was given permission to appoint an assistant director

and other necessary employees. All officers and employees served at the Boards pleasure.

No changes were made to the 1955 law for the next 16 years. Several revisions were enacted over the next three decades. Under the 1971 Executive Reorganization Act, the Board of Pardons was transferred to the Department of Institutions, which is now called the Department of Corrections, for administrative purposes only. Additionally, the position of state director of probation and parole was renamed the administrator of probation and parole, and transferred responsibility for probation and parole field services from the Board of Pardons and Parole to more accurately reflect the Boards functions, which chiefly pertain to parole issues. Auxiliary members were added to the Board of Pardons and Parole in 1979 and 1995. These members attend meetings that a regular Board member cannot attend. At these meetings, the auxiliary member has all the rights and responsibilities of a regular Board member.

Several recent changes in the Montana code have greatly impacted the operation of the Board. The 1989 legislature amended the parole statute to reflect that parole may be granted rather than shall be granted. This was effective on March 10, 1989, and is significant because it eliminates for all crimes committed after that date the liberty interest in parole, which requires minimum due process. The 1995 legislature eliminated good time for the purposes of parole eligibility effective April 13, 1995, and entirely as of February 1, 1997. Unless the court otherwise orders, each inmate now serves 25 percent of his sentence prior to becoming parole eligible and 100 percent of the sentence prior to discharge. An offender must serve 30 years of a life sentence prior to parole consideration. The 2003 legislature authorized the appointment of hearing panels to conduct parole hearings and to issue a final decision concerning parole. If the two board members of the hearing panel are unable to reach a unanimous decision, the presiding officer of the board shall convene a panel of three board members as soon as is practicable to rehear the case. The hearing panels have the full authority and power of the board to order the denial, grant, or revocation of parole.

The goals of the Montana Board of Pardons and Parole are:

To protect the public safety and make every feasible effort to cause the rehabilitation of those offenders incarcerated and those released. To subscribe to and promote parole as a process consisting of many decision junctures.

To develop and implement a program of parole process education to ensure the offender, public, victims, judiciary, and policymaking authorities are aware of trends and results within the parole process.

To maintain and manage a state parole process that is consistent with sound release procedure and principles.

The paramount objectives of the Board are to:

Carefully review each eligible inmate nearing the end of a period of incarceration set by the court. Parole may be granted when, in the Board's opinion, there is a reasonable probability that the inmate can be released without detriment to the offender or community.

Make every feasible effort to bring about the rehabilitation of those inmates incarcerated or released and demand each inmate demonstrate he is no longer a danger to society before seriously considering release.

Allow victims to present a statement concerning the effects of the crime on the victim or family including, but not limited to, their opinion regarding the release of an offender.

Establish specific conditions which an offender must meet prior to release.

Set specific and individual conditions of parole to which an offender must agree prior to release.

To monitor offenders carefully through a network of professional parole officers and to return promptly to custody releasees who are unable or unwilling to adjust to parole supervision, violate conditions of release, and endanger public safety.

To protect society by not releasing inmates and/or by extending the time in prison for more violent and dangerous offenders.

To recommend to the governor pardons and commutation of sentences for those offenders meeting specific criteria.

To carefully review, approve or deny, and establish the conditions of conditional discharges from supervision.

## **C. Pre-Audit Meeting**

Prior to the audit, the team members individually reviewed the information provided by the Association staff and the officials from the State of Montana, Board of Pardons and Parole.

The chairperson divided standards into the following groups:

Standards #2-1001 to #2-1069 Douglas J. Gertsema, Chairperson  
Standards #2-1070 to #2-1120 Wayne Smith, Member

## **D. The Audit Process**

### **1. Transportation**

The team was escorted by Craig Thomas, Executive Director, Montana Board of Pardons and Parole, at 7:30 a.m. on September 22, 2003, from the Hampton Inn in Butte, Montana, to the Board offices in Deer Lodge, Montana.

### **2. Agency Tour**

The team toured the agency, at 8:00 a.m., which is housed in a stately two-story structure that formerly served as the residence of the warden of the historic Montana State Prison. The building has been nicely preserved, and necessary restoration has been accomplished with the assistance of inmates. Mr. Thomas escorted the team on the tour and provided explanation of the operations of the agency as well as introduction of staff members. The audit team met with the staff as a group and had them all to give an overview of their current job responsibilities.

### **3. Entrance Interview**

The audit team was fortunate to visit at length with Craig Thomas, Executive Director, Montana Board of Pardons and Parole, during the commute from Butte to Deer Lodge. The team expressed the appreciation of the Association for the opportunity to be involved with the Montana Board of Pardons and Parole in the accreditation process.

It was explained that the goal of the visiting team was to be as helpful and non-intrusive as possible during the conduct of the audit. The chairperson emphasized the goals of accreditation toward the efficiency and effectiveness of correctional systems throughout the United States. The audit schedule was also discussed at this time.

### **4. Conditions of Confinement/Quality of Life**

Throughout the audit, the team evaluated the overall quality of life at the agency. The audit team was impressed with the professionalism, commitment, and dedication exhibited by the Board=s workforce. The staff take great pride in the work they do day in and day out and there is a true sense of teamwork. The audit team was also impressed with the experience that all staff had and the expertise in their current role.

## **E. Examination of Records**

Following the facility tour, the team proceeded to the office of Executive Director Craig Thomas to review the accreditation files and evaluate compliance levels of the policies and procedures. Many of the files were unorganized and lacked three years worth of secondary documentation. There was also a lack of highlighting which made required information difficult to locate. The audit team gave staff the opportunity to gather the documentation needed to get the file in compliance and in most cases they were able to do so prior to the close of the audit. The audit team strongly encouraged staff to place the required documents in the compliance files on a required basis to ensure documentation is in place to show compliance with the standards. The team suggested use of dividers to separate the three years worth of secondary documentation. The team also suggested that highlighting be done so required information in files can be easily located. The agency has no notices of non-compliance with local, state, or federal laws or regulations.

There are no mandatory standards for Adult Parole Authorities. The team found seven not applicable non-mandatory standards. Additionally, the visiting team found the Board to be in non-compliance with seven non-mandatory standards for a compliance percentage of 94.4.

During the course of the audit, team members also inspected personnel, and offender files. All files were well maintained and maintained all necessary documentation.

### **1. Litigation**

Over the last year, the agency had no consent decrees, class action lawsuits or adverse judgments.

### **2. Significant Incidents**

The Montana Board of Pardons and Parole is an administrative release authority. It has no offender custodial or supervisory responsibilities. Therefore, the Significant Incident Summary has no applicability to the agency.

### **3. Departmental Visits**

Team members visited the following departments to review conditions relating to agency policy and operations:

<u>Department Visited</u>	<u>Person (s) Contacted</u>
Finance	Craig Thomas, Executive Director
Case Operations	Jeff Walter, Administrative Officer
Victim Services	Jeff Walter, Administrative Officer
	Cathy Johnson, Administrative Assistant
Training	Craig Thomas, Executive Director
	Jeff Walter, Administrative Officer
Offender Files	Cathy Johnson, Administrative Assistant
	Mary Kay Cavanaugh, Administrative Support

## **F. Interviews**

During the course of the audit, team members either met with or conducted a telephone interview with each employee of the Montana Board of Pardons and Parole to verify observations and/or to clarify questions concerning agency operations. All staff members discussed their particular job assignments with enthusiasm. Employees were very professional and displayed an attitude of being a part of something good. Without exception, staff members indicated that they enjoyed their work. They acknowledged and appreciated the support of administration. There is a spirit of camaraderie and excellent morale.

## **G. Exit Discussion**

The exit interview was held at 10:30 a.m. in the office of Executive Director Craig Thomas with Mr. Thomas in attendance.

The chairperson provided the percentage of compliance found by the visiting committee for the standards. He congratulated the agency for the outcome of the field audit. The team members then reviewed their individual findings with those present. The Montana Board of Pardons and Parole was complimented on the quality of its operations and its professional, dedicated staff. The chairperson outlined the procedures that would follow the audit.

The chairperson expressed appreciation for the tremendous cooperation of everyone concerned and for the wonderful hospitality afforded the team. He commended the agency for committing to the accreditation process, congratulated them for the progress made, and encouraged them to continue to strive toward even further professionalization of the correctional field.

COMMISSION ON ACCREDITATION FOR CORRECTIONS

AND THE

AMERICAN CORRECTIONAL ASSOCIATION

## Compliance Tally

<b>Standards Manual</b>	Adult Parole Authorities, second edition
<b>Supplement</b>	2002 Standards Supplement
<b>Facility/Program</b>	Montana Board of Pardons and Parole
<b>Audit Dates</b>	September 22-23, 2003
<b>Auditor(s)</b>	Doug Gertsema, Chairperson; Wayne Smith, Member

	<b>MANDATORY</b>	<b>NON-MANDATORY</b>
Number of Standards in Manual	0	134
Number Not Applicable	0	7
Number Applicable	0	127
Number Non-Compliance	0	7
Number in Compliance	0	120
Percentage (%) of Compliance	100%	94.4%
<p>!      Number of Standards <i>minus</i> Number of Not Applicable <i>equals</i> Number Applicable</p> <p>!      Number Applicable <i>minus</i> Number Non-Compliance <i>equals</i> Number Compliance</p> <p>!      Number Compliance <i>divided by</i> Number Applicable <i>equals</i> Percentage of Compliance</p>		



# COMMISSION ON ACCREDITATION FOR CORRECTIONS

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Deer Lodge, Montana

September 22-23, 2003

## Visiting Committee Findings

Non-Mandatory Standards

Non-Compliance

### **Standard #2-1039**

POSITIONS OF MEMBERS OF THE PAROLE AUTHORITY ARE FULL-TIME. IN JURISDICTION WHERE THE PAROLE AUTHORITY HAS MINIMUM OF CASES TO BE HEARD, THE CHAIRPERSON MUST BE FULL-TIME BUT OTHER MEMBERS MAY BE PART-TIME. A FULL JURISDICTION FOR SUCH ACTION IS NECESSARY. (IMPORTANT)

#### FINDINGS

The Montana Board of Pardons and Parole is a part-time citizen board.

#### AGENCY RESPONSE

#### Waiver

The Montana Board of Pardons and Parole is a part-time citizen board. The Board will continue discussion with the Montana Law and Justice Interim Committee regarding possible legislation to authorize a full-time chair. However, the 2003 Montana Legislature reviewed and discussed the composition of the Parole Board when considering House Bill 211. The bill passed but did not authorize a full-time chair, Montana law does not authorize a fulltime chair.

#### AUDITOR'S RESPONSE

The visiting committee supports the waiver.

## **Standard #2-1040**

TENURE ON THE PAROLE AUTHORITY IS NO LESS THAN FIVE YEARS. LEGAL PROVISION ALLOWS FOR THE REMOVAL OF PAROLE AUTHORITY MEMBERS FOR GOOD AND DEMONSTRATED CAUSE ONLY AFTER A FULL AND OPEN HEARING WHEN ONE HAS BEEN REQUESTED BY THE MEMBER. (IMPORTANT)

### **FINDINGS**

Montana Statute requires that members be appointed to a four year team.

### **AGENCY RESPONSE**

#### Waiver

The Board will continue discussions with the Montana Law and Justice Interim Committee regarding possible legislation to authorize five-year terms. However, the 2003 Montana Legislature reviewed and discussed the composition of the Parole Board when considering House Bill 211. The bill passed and retained four-year terms for members.

### **AUDITOR'S RESPONSE**

The visiting committee supports the waiver.

## **Standard #2-1059**

PAROLE AUTHORITY MEMBERS AND ALL FULL-TIME EMPLOYEES EXCEPT CLERICAL/SUPPORT STAFF RECEIVE A MINIMUM OF 40 HOURS OF RELEVANT TRAINING AND EDUCATION ANNUALLY IN ADDITION TO ADMINISTRATIVE STAFF MEETINGS. FULL-TIME CLERICAL AND SUPPORT EMPLOYEES RECEIVE AT LEAST 16 HOURS OF TRAINING ANNUALLY.

### **FINDINGS**

Three staff members failed to meet their annual training requirements in 2001. Specifically, Julie Pribnow (29 hrs), and Craig Thomas (29 hrs).

## AGENCY RESPONSE

### Appeal

Board staff members Julie Pribnow, James Pfeifer, and Craig Thomas all received 45 hours training during calendar year 2001. These staff members were 16 hours short during the 2001 staff evaluation period because of a two-week delay in a training conference but did receive over 40 hours training for the calendar year 2001.

## AUDITOR'S RESPONSE

The visiting does not support the appeal and believes a plan of action should be developed to meet the standard.

## **Standard #2-1085**

THE OFFENDER IS NOTIFIED PERSONALLY AND ORALLY BY THE PAROLE AUTHORITY MEMBERS OR HEARING EXAMINERS WHO HAVE HEARD THE CASE AS TO THE RECOMMENDATION OR DECISION IMMEDIATELY AFTER THE HEARING. (ESSENTIAL)

## FINDINGS

Offenders are only notified in writing. Also, no proof of practice that offenders are informed verbally for the past three years.

## AGENCY RESPONSE

### Appeal

The Board is in compliance with this standard. Offenders appearing before the Montana Parole Board are notified both verbally and in writing as to the members' or hearing examiner's disposition or recommendation immediately following the hearing. Documentation was not in the file at the time of the audit but the file has been updated and documentation is on record.

## AUDITOR'S RESPONSE

The visiting does not support the appeal and but supports the response to non-compliance as a completed plan of action.

## **Standard #2-1089**

POLICY AND PROCEDURE EXIST FOR HEARINGS IN ABSENTIA. HEARINGS IN ABSENTIA ARE LIMITED TO CASES WHERE THE ABSENCE OF THE OFFENDER IS UNAVOIDABLE AND THERE IS DOCUMENTATION OF THE REASONS FOR THIS SITUATION. (ESSENTIAL)

### **FINDINGS**

Policy and practice does not make provision for an absentia hearing. Also, there was no secondary documentation for past three years.

### **AGENCY RESPONSE**

#### Appeal

This standard should not be applicable. Montana law (46-23-202, MCA) requires that offenders appear at their hearings and does not authorize hearings in absentia. Montana law does authorize parole hearings via interactive videoconference and administrative reviews via telephone conference. Board administrative rule 20.25.401 states that an inmate who is not interested in parole release may waive the right to personally appear before the board. The inmate must acknowledge the fact that the board will render a decision based on the written record and on the fact the inmate is not interested in parole. Board administrative rule 2.25.801 authorizes a parole violator to waive a formal board hearing. The offender must sign a waiver to that effect and must admit to the violations as outlined in the revocation documents.

### **AUDITOR'S RESPONSE**

The visiting does not support the appeal and believes a plan of action should be developed to meet the standard.

## **Standard #2-1099**

GENERAL CONDITIONS FOR RELEASE THAT APPLY TO ALL PAROLEES AND MANDATORY RELEASES UNDER SUPERVISION INCLUDE, AT A MINIMUM, REQUIREMENTS THAT A PAROLEE OBSERVE THE LAW. MAINTAIN APPROPRIATE CONTACT WITH THE PAROLE SYSTEM HAVE A VISIBLE MEANS OF SUPPORT OR A REASONABLE ASSURANCE OF SUPPORT, AND NOTIFY THE PAROLE AGENCY OF CHANGES OF RESIDENCE.

## FINDINGS

No documentation of the practice was in the file for 2001 and 2002.

## AGENCY RESPONSE

### Appeal

The Board is in compliance with the standard and the file did contain documentation for 2003 but lacked 2001 and 2002 documents. The file has been updated and currently contains 2001 and 2002 compliance documentation.

## AUDITOR'S RESPONSE

The visiting does not support the appeal and believes the response is a completed plan of action.

## **Standard #2-1114**

AT LEAST THREE DAYS PRIOR TO THE PRELIMINARY HEARING, THE PAROLEE IS NOTIFIED IN WRITING OF THE TIME AND PLACE OF THE HEARING, AND OF THE SPECIFIC PAROLE VIOLATION(S) CHARGED. THE PAROLEE IS ALSO ADVISED IN WRITING OF THE RIGHT TO:

- PRESENT EVIDENCE AND FAVORABLE WITNESSES
- DISCLOSURE OF EVIDENCE
- CONFRONT ADVERSE WITNESS(ES), UNLESS THE WITNESS(ES) WOULD BE SUBJECTED THEREBY TO A RISK OF HARM
- HAVE COUNSEL OF CHOICE PRESENT, OR, IN CASE OF INDIGENT PAROLEES WHO REQUEST ASSISTANCE TO ADEQUATELY PRESENT THEIR CASE, HAVE COUNSEL APPOINTED
- REQUEST POSTPONEMENT OF THE HEARING FOR GOOD CAUSE (ESSENTIAL)

## FINDINGS

Policy states that at least 48 hours notification is given prior to a hearing.

## AGENCY RESPONSE

### Appeal

Standard 2-1114 should not be applicable. Montana law (46-23-1021, MCA) states that the Montana Department of Corrections retains custody of all persons placed on parole. The Montana Parole Board does not have the authority to dictate policy to the Department.

#### AUDITOR'S RESPONSE

The visiting does not support the appeal and believes a plan of action should be developed to meet the standard.

COMMISSION ON ACCREDITATION FOR CORRECTIONS

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Visiting Committee Findings

Non-Mandatory Standards

Not Applicable

**Standard #2-1008**

THE PAROLE AUTHORITY HAS THE STATUTORY POWER TO CAUSE THE ARREST OF PAROLEES AND THE POWER TO REVOKE PAROLE. (ESSENTIAL)

FINDINGS

Although the Montana Board of Pardons and Parole is the final revocation authority, the Department of Corrections is statutorily authorized to issue parole violation warrants.

**Standard #2-1042**

SALARIES OF PAROLE AUTHORITY MEMBERS ARE WITHIN TWENTY PERCENT OF THE SALARY PAID TO JUDGES OF COURTS HAVING TRIAL JURISDICTION OVER FELONY CASES. (ESSENTIAL)

FINDINGS

Parole Board members serve on a part-time basis and do not receive traditional salaries. Rather, they receive \$50 for each day spent on Board business and are reimbursed for expenses.

**Standard #2-1058**

ALL PART-TIME STAFF AND VOLUNTEERS WORKING LESS THAN 40 HOURS PER WEEK RECEIVE TRAINING APPROPRIATE TO THEIR ASSIGNMENTS; VOLUNTEERS WORKING THE SAME SCHEDULE AS FULL-TIME, PAID STAFF RECEIVE THE SAME TRAINING AS FULL-TIME STAFF. (ESSENTIAL)

FINDINGS

The Montana Board is authorized by the legislature for eight full-time employees only. The staff and the Board does not utilize volunteers.

**Standard #2-1106**

WARRANTS FOR THE ARREST AND DETENTION OF PAROLEES, PENDING A DETERMINATION BY THE PAROLE AUTHORITY AS TO WHETHER PAROLE SHOULD BE REVOKED, OR PROVISIONALLY REVOKED, ARE ISSUED ONLY UPON THE AFFIRMATIVE APPROVAL OF A PAROLE AUTHORITY MEMBER OR THE STATEWIDE OR REGIONAL DIRECTOR OF PAROLE SUPERVISION SERVICES. (ESSENTIAL)

FINDINGS

Warrants are issued by the department of corrections.

**Standard #2-1108**

WHEN PAROLE VIOLATION CHARGES ARE BASED ON THE ALLEGED COMMISSION OF A NEW CRIME, A DETENTION WARRANT IS NOT ISSUED UNLESS THE PAROLEE'S PRESENCE IN THE COMMUNITY WOULD PRESENT AN UNREASONABLE RISK TO PUBLIC OR INDIVIDUAL SAFETY. (ESSENTIAL)

FINDINGS

Department of Corrections issues warrants and the Pardon and Parole Board has no control over that process.

**Standard #2-1109**

WHEN A PAROLEE IS ARRESTED ON A DETENTION WARRANT, OR WHEN A DETENTION WARRANT IS LODGED AS A BACK-UP TO BAIL IN COMMUNICATION WITH PENDING CRIMINAL CHARGES, A PRELIMINARY HEARING\* IS HELD WITHIN FOURTEEN CALENDAR DAYS AFTER THE ARREST AND DETENTION OF THE PAROLEE OR THE LODGING OF THE DETENTION WARRANT; HOWEVER, WHEN THERE HAS BEEN A CONVICTION OR A FINDING OF PROBABLE CAUSE ON NEW CRIMINAL CHARGES, THE PRELIMINARY HEARING IS NOT REQUIRED. (ESSENTIAL)

FINDINGS

Pardons and Parole Board does not issue warrants. Department of Corrections is authorized by statute to issue warrants.

**Standard #2-1121**

IN JURISDICTIONS WHERE THE PAROLE AUTHORITY HAS DISCRETION TO AWARD OR FORFEIT GOOD CONDUCT DEDUCTIONS FOR TIME SERVED ON



PAROLE IN THE COMMUNITY, THERE ARE WRITTEN GUIDELINES FOR THE AWARD OR FORFEITURE OF SUCH DEDUCTIONS.

#### FINDINGS

The Montana Board of Pardons and Parole has no authority over good conduct time.